



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2015-0833; FRL-9962-48-Region 6]

#### **Approval and Promulgation of Implementation Plans; Texas; Clean Air Act Requirements for Vehicle Inspection and Maintenance and Nonattainment New Source Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Texas for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The SIP revision being approved pertains to CAA 2008 ozone NAAQS requirements for vehicle inspection and maintenance (I/M) and nonattainment new source review (NNSR) in the Dallas/Fort Worth ozone nonattainment area (DFW area).

**DATES:** This rule is effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2015-0833, at <http://www.regulations.gov> or via email to [young.carl@epa.gov](mailto:young.carl@epa.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not

submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

*Docket:* The index to the docket for this action is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl Young, 214-665-6645, [young.carl@epa.gov](mailto:young.carl@epa.gov). To inspect the hard copy materials, please schedule an appointment with Mr. Young or Mr. Bill Deese at 214-665-7253.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” mean the EPA.

## **I. Background**

In 2008 we revised the 8-hour ozone primary and secondary NAAQS to a level of 0.075 parts per million (ppm) to provide increased protection of public health and the environment (73

FR 16436, March 27, 2008). The 2008 8-hour ozone NAAQS replaced the 1997 8-hour ozone NAAQS of 0.08 ppm. The DFW area was classified as a “Moderate” ozone nonattainment area for the 2008 8-hour ozone NAAQS and initially given an attainment date of no later than December 31, 2018 (77 FR 30088 and 77 FR 30160, May 21, 2012). The DFW area consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant and Wise counties.

On December 23, 2014, the D.C. Circuit Court issued a decision rejecting, among other things, our attainment deadlines for the 2008 ozone nonattainment areas, finding that we did not have statutory authority under the CAA to extend those deadlines to the end of the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464-69 (D.C. Cir. 2014). Consistent with the court’s decision we modified the attainment deadlines for all nonattainment areas for the 2008 ozone NAAQS, and set the attainment deadline for all 2008 Moderate ozone nonattainment areas, including the DFW area as July 20, 2018 (80 FR 12264, March 6, 2015).

On July 10, 2015, Texas submitted a SIP revision for the DFW area based on an attainment date of December 31, 2018. Texas further revised the SIP to address an attainment date of July 20, 2018 and submitted it on August 5, 2016. Copies of the SIP revisions are available at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R06-OAR-2015-0833.

As a moderate ozone nonattainment area and under the anti-backsliding requirements of the previous standards, Texas is required to implement I/M and NNSR programs. These were also requirements under the previous ozone standards. In the August 5, 2016 SIP revision Texas discusses these requirements and noted: (1) that the DFW area meets the CAA requirements to implement an I/M program and (2) since the Dallas/Fort Worth 1997 ozone nonattainment area was not redesignated to attainment prior to the revocation of the 1979 1-hour ozone NAAQS and the 1997 ozone NAAQS, anti-backsliding NNSR requirements for Serious areas still apply.

Texas also noted that a redesignation substitute demonstration was submitted for the 1997 ozone NAAQS to satisfy anti-backsliding requirements for the revoked NAAQS in the DFW area.

Anti-backsliding requirements ensure air quality in nonattainment areas does not get worse after an air quality standard is revoked (81 FR 81276, 81288, November 17, 2016). The EPA approved Texas SIP (Texas SIP) that incorporates by reference the state's regulations can be found at 40 CFR 52.2270(c).

## **II. EPA's Evaluation**

### *A. CAA Requirements for I/M in the DFW Area*

I/M refers to the inspection and maintenance programs for in-use vehicles required under the CAA. The applicable requirements for ozone nonattainment areas that are required to adopt I/M programs are described in CAA sections 182(a)(2)(B), 182(b)(4), 182(c)(3), and 184(b)(1)(A) and further defined in 40 CFR 51.350 ("Applicability") of the I/M rule (40 CFR part 51, subpart S). Under these cumulative requirements, Moderate ozone nonattainment areas in urbanized areas with 1990 Census populations of 200,000 or more are required to adopt basic I/M programs, while Serious and higher classified ozone nonattainment areas outside of the northeast Ozone Transport Region with 1980 Census-defined urbanized populations of 200,000 or more are required to adopt enhanced I/M programs (40 CFR 51.350(a)(2) and (4)).

Previously, we revoked (1) the 1979 1-hour ozone NAAQS (69 FR 23951, April 30, 2004 and 70 FR 44470, August 3, 2005) and (2) the 1997 8-hour ozone NAAQS (80 FR 12264, March 6, 2015). Because the DFW area was classified as Serious nonattainment for these revoked ozone NAAQS, an enhanced I/M program is required in the DFW area for anti-backsliding purposes (40 CFR 51.1100(o)). Ozone classifications can be found in CAA section 181 and 40 CFR 51.1103. The Serious classification is one classification higher than the Moderate classification.

The Texas SIP includes 30 TAC Section 114.2 (Inspection and Maintenance Definitions) and 30 TAC Section 114.50 (Vehicle Emissions Inspection Requirements) except for 30 TAC Section 114.50(b)(2). In a 2001 final rule, we did not approve 30 TAC Section 114.50(b)(2) as part of the Texas SIP as (1) it placed an additional reporting burden upon commanders at Federal facilities regarding affected Federal vehicles that is not imposed upon any other affected non-federal vehicle and (2) additional reporting requirement is not an essential element for an approvable I/M program, since affected Federal vehicles are also subject to the same reporting requirements as other affected non-federal vehicles (66 FR 57261, 57262, November 14, 2001).

Under these provisions Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall and Tarrant counties are included in an enhanced I/M program. An enhanced program is required for anti-backsliding purposes since these counties were classified as Serious nonattainment for the 1997 8-hour ozone NAAQS (75 FR 79302, December 20, 2010). The program requires that gasoline powered light-duty vehicles, and light and heavy-duty trucks between two and twenty-four years old, that are registered or required to be registered in the I/M program area, including fleets, are subject to annual inspection and testing. Wise County is not required to be included in the I/M program as it is not included in the urbanized area. *See* [www2.census.gov/geo/pdfs/reference/ua/1990uas.pdf](http://www2.census.gov/geo/pdfs/reference/ua/1990uas.pdf) and [www.census.gov/population/metro/files/lists/historical/90mfips.txt](http://www.census.gov/population/metro/files/lists/historical/90mfips.txt). Therefore, since the provisions in the Texas SIP already include the CAA I/M requirements for the DFW area, we are approving this portion of the SIP revisions.

#### *B. CAA Requirements for NNSR in the DFW Area*

The applicable NNSR requirements for the various ozone nonattainment classifications are described in CAA section 182 and further defined in 40 CFR part 51, subpart I (Review of

New Sources and Modifications). Under these requirements new major sources or major modifications at existing sources in an ozone nonattainment area must comply with the lowest achievable emission rate and obtain sufficient emission offsets. The emission offset ratio required for Moderate ozone nonattainment areas is 1.15 to 1 (CAA section 182(b)(5)).

The Texas SIP includes 30 TAC Section 116.12 (Nonattainment and Prevention of Significant Deterioration Review Definitions) and 30 TAC Section 116.150 (New Major Source or Major Modification in Ozone Nonattainment Area). These provisions require new major sources or major modifications at existing sources in the DFW area to comply with the lowest achievable emission rate and obtain emission offsets at the Moderate classification ratio of 1.15 to 1. Therefore, since the provisions in the Texas SIP already include the CAA NNSR requirements for ozone nonattainment areas classified as Moderate, we are approving this portion of the SIP revision.

We note that at the time of the SIP revisions, except for Wise County, the Serious area NNSR permitting requirements for the 1997 8-hour ozone NAAQS applied for the DFW area to meet anti-backsliding requirements. Moderate area NNSR permitting requirements applied to Wise County. In November 2016, we approved a redesignation substitute for the DFW area, which addressed both the 1-hour and 1997 ozone standards. This action found that the area was meeting these standards and was expected to continue to meet these standards. Based on this finding, EPA, as part of the redesignation substitute, removed the Serious area NNSR requirement so that only Moderate area NNSR requirements apply to the DFW area (81 FR 78688, November 8, 2016).

### **III. Final Action**

We are approving revisions to the Texas SIP submitted on August 5, 2016, that pertain to 2008 ozone NAAQS requirements for vehicle I/M and NNSR for the DFW area. As discussed above, the Texas SIP includes provisions to implement these Moderate area ozone nonattainment requirements.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Samuel Coleman was designated the Acting Regional Administrator on June 1, 2017 through the order of succession outlined in Regional Order R6-1110.13, a copy of which is included in the docket for this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 1, 2017.

**Samuel Coleman,**  
*Acting Regional Administrator, Region 6.*

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart SS – Texas**

2. In §52.2270(e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas is amended by adding an entry at the end for “Vehicle Inspection and Maintenance and Nonattainment New Source Review Requirements for the 2008 Ozone NAAQS” to read as follows:

**§52.2270 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP**

| Name of SIP provision  | Applicable geographic or non-attainment area | State approval/ submittal date | EPA approval date   | Comments |
|--|--|--------------------------------|---|----------|
| * * * * *  |  |                                |   |          |
| Vehicle Inspection and Maintenance and Nonattainment New Source Review Requirements for the 2008 Ozone NAAQS | Dallas-Fort Worth, TX                        | 7/6/2016                       | <b>[Insert date of publication in the Federal Register],<br/>[Insert Federal Register citation]</b> |          |